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Cases, Regulations and Statutes

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8 Est. of Pillsbury v. Comm'r, T.C. Memo. 1992-425.

9 Est. of Feuchter v. Comm'r, T.C. Memo. 1992-97.

10 Robinson v. U.S., 90-2 U.S.T.C. ¶ 60,045 (S.D. Ga. 1990).

11 See Ltr. Rul. 9336002, May 28, 1993.

12 See, e.g., Est. of Andrews v. Comm'r, 79 T.C. 938 (1982) (discount allowed for minority stock interest for lack of control and marketability even though rest of stock owned by siblings of decedent); Est. of Lenheim v. Comm'r, T.C. Memo. 1990-403 (discount allowed at death for minority interest status and lack of marketability). But see Est. of O'Connell v. Comm'r, T.C. Memo. 1978-191, aff'd, 640 F.2d 249 (9th Cir. 1981) (ranch stock valued at net asset value of underlying property; court did not allow discount for mon-marketabiltity).

13 Est. of Lenheim v. Comm'r, T.C. Memo. 1990-403 (discount of 20 percent); Est. of Murphy v. Comm'r, T.C. Memo. 1990-472 (20 percent discount allowed for non-marketability and state law restricting liquidation). See also Est. of Berg v. Comm'r, T.C. Memo. 1991-279, *aff'd on these issues*, 92-2 U.S.T.C. ¶ 60,117 (8th Cir. 1992) (estate entitled to 20 percent minority discount and 10 percent for lack of marketability for 26.9 percent ownership in closely held corporation).

14 Rev. Rul. 93-12, I.R.B. 1993-7, revoking Rev. Rul. 81-253, 1981-2 C.B. 187 (no minority discount for gift tax purposes for value of one-third interest in closely held corporations transferred to each of three children).

15 Est. of Salsbury v. Comm'r, T.C. Memo. 1975-333 (38.1 percent control premium for 51.8 percent of stock). *But see* Est. of Bright v. Comm'r, 658 F.2d 999 (5th Cir. 1981) (no control premium where decedent's undivided one-half community property interest in control block of stock was effectively severed into two minority interests at death; family attribution rules not applicable).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

HORSES-*ALM* § 1.01[1].* The plaintiff was injured while riding a horse owned by the defendants on land owned by the defendants. The plaintiff was thrown from the horse when the horse suddenly bolted. The plaintiff alleged that the defendants failed to warn about the horse's dangerous propensities. The court upheld a directed verdict for the defendant because the plaintiff failed to provide any evidence of the horse's propensity to throw its rider. **Mason v. Komlo, 621 N.E.2d 716 (Ohio Ct. App. 1993)**.

BANKRUPTCY

GENERAL

ESTATE PROPERTY-*ALM* § 13.03[3].* Within 180 days after the debtor filed bankruptcy, the debtor's aunt died leaving the debtor a bequest of real and personal property. The estate was not admitted to probate until after 180 days following the bankruptcy petition and the debtor argued that under state law, the debtor was not entitled to the bequests until after the will was admitted to probate. The court held that the bequests were estate property because under state law the title to the property passed under the will upon the death of the decedent, with confirmation upon admission of the will to probate. ***In re* Chenoweth, 3 F.3d 1111 (7th Cir. 1993), *aff'g*, 143 B.R. 527 (S.D. Ill. 1992), *aff'g*, 132 B.R. 161 (Bankr. S.D. Ill. 1991)**.

EXEMPTIONS-*ALM* § 13.03[3].*

AVOIDABLE LIENS. The debtors claimed a homestead exemption for a 1.1 acre homestead. A creditor had obtained a judgment lien against the property and 106 acres of farmland and the debtor sought to avoid the lien as impairing the homestead exemption and as unsecured as to the farmland. The court held that although Ohio law allowed attachment of judgment liens against homesteads only upon sale or execution, the lien could be avoided as impairing the bankruptcy exemption, even where the homestead was not going to be sold. The court also held that although the lien was completely unsecured as to the farmland, the lien would be allowed to remain in effect until the land was sold in foreclosure, in case any equity arose from the sale. ***In re* Mershman, 158 B.R. 698 (Bankr. N.D. Ohio 1993)**.

In 1988 through 1990, the debtors lived in a residence for which the debtors purchased building materials for improvements to the home. The debtors had not paid for the materials and the supplier filed a claim in the debtors' January 1993 bankruptcy case. In October 1990, the debtors changed residences and claimed a homestead exemption for the second residence in the bankruptcy case. The supplier obtained a judgment for the unpaid materials and filed a lien against the debtors' homestead. The debtors sought avoidance of the lien as impairing their homestead exemption. The court held that because the claim arose prior to the debtors' acquisition of the exempt homestead, the claim could not be avoided; however, because the claim was against the husband only, the claim could be avoided. ***In re* Streeper, 158 B.R. 783 (Bankr. N.D. Iowa 1993)**.

HOMESTEAD. The court held that the debtors could claim a homestead exemption under Mo. Rev. Stat. § 513.475, for a residence purchased by the debtors under a contract for deed. ***In re* Galvin, 158 B.R. 806 (Bankr. W.D. Mo. 1993)**.

The court held that the debtor could claim a homestead exemption for a mobile home under Fla. Stat. § 222.05. ***In re* Meola, 158 B.R. 881 (Bankr. S.D. Fla. 1993)**.

IRA. The debtor had opened an IRA using personal funds and had contributed additional personal funds to the account. The debtor had also rolled over to the IRA amounts distributed from pension funds after termination of prior employment. The debtor withdrew the personal funds from the IRA and turned the funds over to the trustee but the debtor claimed the remaining funds in the IRA as exempt under N.Y.C.P.L.R. § 5205(c)(2). The trustee argued that the IRA could be exempt only if the IRA was initially opened using funds rolled over from pension plans. The court held that the exemption would be allowed to the extent of the rolled over funds. ***In re*** **Modansky, 159 B.R. 139 (Bankr. S.D. N.Y. 1993)**.

CHAPTER 12-*ALM* § 13.03[8].*

DISCHARGE. The debtor was a family farm partnership with two brothers as the partners. The brothers purchased farmland for the partnership and in the partnership agreement and several loan documents declared that the land was not partnership property. However, the partnership paid all the tax and mortgage payments on the property and the partnership listed the land on its bankruptcy schedules. The court held that because the partners always treated the land as owned by the partnership, the farmland was partnership property. The court also held that an FmHA lien against the property was unsecured and voided as to the partnership by the bankruptcy case; however, the partners' personal liability on the lien was not affected by the bankruptcy case. ***In re*** **Sealey Bros., 158 B.R. 801 (Bankr. W.D. Mo. 1993)**.

PLAN. The debtors' Chapter 12 plan provided for setoff of a portion of a Federal Land Bank's claim by transfer to the bank of the bank's stock held by the debtors. The plan also provided for 10 percent interest on deferred plan payments to the bank. The court held that under the majority of cases on the issue, the debtor could use a transfer of the stock to the bank to offset the claim, to the extent of the par value of the stock. The court also held that 10 percent interest on deferred plan payments was sufficient because it equaled the prime rate of interest plus a risk factor. ***In re*** **Davenport, 158 B.R. 830 (Bankr. E.D. Cal. 1992)**.

TRUSTEE FEES. The debtors' Chapter 12 plan provided for payment of the trustee's fees except where direct payments to creditors were made. The plan also provided that the debtor would make all disbursements under the plan except for payments required to be made by the trustee. The trustee argued that the trustee fee was required to be paid on all payments under the plan on impaired claims, even those directly paid by the debtors. The debtors argued that the plan allowed direct payment of impaired claims; therefore, no fee was due for these direct payments. The Bankruptcy Court held that under Section 586, payments on impaired claims are made under the plan and require payment of the trustee's fee. The District Court reversed, holding that where the confirmed plan provided for direct payments to creditors without payment of trustee's fees, no payment of trustee's fees was required. ***In re*** **Wagner, 159 B.R. 268 (D. N.D. 1993),** ***rev'g*****, 150 B.R. 753 (Bankr. D. N.D. 1993)**.

CHAPTER 13-*ALM* § 13.03[3].*

PLAN. The debtors' plan provided for valuation of the debtors' farm at the fair market value as of the date of the Chapter 13 petition, less the hypothetical costs of a foreclosure and sale. The court followed the majority of cases and held that the hypothetical costs of a foreclosure and sale could not be deducted from the fair market value of the debtors' property, for purposes of determining the secured amount of liens against the property, where the debtors remained in possession of the property. ***In re*** **Huff, 159 B.R. 262 (Bankr. W.D. Mo. 1993)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

CLAIMS. The debtors originally filed for Chapter 7 in February 1985 and converted the case to Chapter 13 in March 1987. The IRS filed claims for taxes for 1982, 1983 and 1988. The debtors received a discharge in July 1990 and in 1991 filed the returns for 1985, 1986 and 1987 but did not pay the taxes. The debtors filed a second Chapter 13 case in December 1992 and the IRS filed claims for the 1985, 1986 and 1987 taxes. The debtors claimed that the taxes were discharged in the first Chapter 13 case as prepetition tax liabilities. The court held that the date of the original Chapter 7 filing was the date to be used to determine that the tax claims were post-petition and not discharged in the first bankruptcy case. The court held that the IRS had the option to file for the taxes in the first case or wait until after confirmation to assess the taxes against the debtors; therefore, the claims could be made in the second case. ***In re*** **Hudson, 158 B.R. 670 (Bankr. N.D. Ohio 1993)**.

DISCHARGE. The debtors filed for Chapter 7 and received a discharge. The IRS made post-confirmation assessments for prepetition tax liabilities for which the debtors were convicted of willfully evading taxes and failure to file tax returns. The debtors sought sanctions against the IRS for violation of the discharge injunction. The court held that the tax liability was nondischargeable whether or not the IRS filed a nondischargeability proceeding prior to the general discharge; therefore, the post-discharge assessments were allowed. ***In re*** **Ellsworth, 158 B.R. 856 (M.D. Fla. 1993)**.

PARTNERSHIP. The court held that a general partner was liable for federal employment withholding taxes not paid by the partnership and that the taxes were nondischargeable in the partner's bankruptcy case. ***In re*** **Norton, 158 B.R. 834 (Bankr. D. Idaho 1993)**.

SETOFF. The debtor filed the income tax returns for 1987 and 1989 after filing for Chapter 7. The returns claimed refunds for each year. The IRS set off the refunds against the debtor's tax liability for 1984. The debtor then sought and obtained a determination that the 1984 tax liability was dischargeable. The debtor then objected to the setoff by the IRS as void for violating the automatic stay and requested turnover of the refunds because the tax liability against which the refunds were offset was dischargeable. The court held that because the setoff would have been allowed but for the IRS's failure to obtain relief from the automatic stay, neither the technical violation of the automatic stay nor the pre-discharge determination that the 1984 taxes were dischargeable prevented the setoff of the refunds against the 1984 tax liability. ***In re* Gribben, 158 B.R. 920 (S.D. N.Y. 1993)**.

The debtor filed for bankruptcy on June 6, 1992 and filed the income tax return for 1991 on June 11, 1992. The 1990 return was filed on June 16, 1992 and the 1989 return was filed in November 1992. All three returns claimed a refund. The IRS sought relief from the automatic stay to set off the refunds against a portion of the debtor's 1987 tax liability, arguing that the liability for the refunds arose on December 31 of each tax year and were prepetition obligations of the IRS which could be offset against the prepetition tax liability of the debtor. The court held that the setoff would be allowed, noting that a contrary holding would give debtors too much control over IRS setoff rights. ***In re* Thorvund-Statland, 158 B.R. 837 (Bankr. D. Idaho 1993)**.

TAX LIENS. The debtor filed for Chapter 11 in October 1989 and had the case converted to Chapter 7 in June 1990. The bankruptcy estate included an automobile of which the Chapter 7 trustee took possession in July 1990 and eventually sold. The IRS filed a secured claim in February 1990 based on liens filed in 1988 and 1989. The trustee sought to avoid the tax liens under Section 545(2) and I.R.C. § 6323(b) as a bona fide purchaser. The court held that because the trustee had notice, upon the IRS filing of the claim, of the IRS lien before obtaining possession of the vehicle in July 1990, the trustee could not avoid the lien under I.R.C. § 6323(b). ***In re* Walter, 158 B.R. 984 (N.D. Ohio 1993)**.

FEDERAL AGRICULTURAL PROGRAMS

AGRICULTURAL LABOR. The plaintiffs were temporary migrant agricultural workers with family members who applied for agricultural labor jobs which offered free housing only to the workers and not the family members. The practice of not offering free housing to family members was the prevailing practice in the area. The plaintiffs argued that the offering of free housing only to workers violated the Fair Housing Act of 1968 (as amended in 1988) provision for discrimination on the basis of familial status in the providing of housing. The defendant argued that the Immigration Reform and Control Act of 1986 (IRCA) controlled the employer's duty to provide housing for foreign and domestic agricultural laborers' family members only where the practice is prevailing in the area. The court held that the IRCA controlled because when the Fair Housing Act was amended in 1988, the act made no mention of repealing the IRCA requirement. Also, the IRCA controlled because the act provided rules in a more specific area than the Fair Housing Act. **Farmer v. Employment Sec. Comm'n of N.C., 4 F.3d 1274 (4th Cir. 1993)**.

MEAT AND POULTRY PRODUCTS. The FSIS has issued proposed regulations expanding the types of labeling authorized for use on meat and poultry products by domestic and foreign certified establishments. **58 Fed. Reg. 62014 (Nov. 23, 1993)**.

PESTICIDES-*ALM* § 2.04.* The plaintiff's son died from an allergic reaction to a bee sting while performing landscaping services on the defendant's property. The defendant had sprayed a hive of bees with a pesticide manufactured by another defendant and the plaintiff alleged that the bee which stung the son did not receive a lethal dose of the pesticide. The plaintiff sued the manufacturer for failing to warn of the danger from failing to give a lethal dose to all the bees. The court held that the action was pre-empted by FIFRA because in order for the manufacturer to avoid liability, the manufacturer would have to include warnings on the label not required by FIFRA. **Moody v. Chevron Chemical Co., 505 N.W.2d 900 (Mich. Ct. App. 1993)**.

The plaintiff had applied a herbicide manufactured by the defendant on a soybean crop in a previous year and then planted corn on the acres in the following year. The plaintiff's corn crop was damaged and the plaintiff sued the manufacturer for failure to warn that the usual 11 month carryover period would be increased by drought conditions. The court held that the plaintiff's claims were preempted by FIFRA because the claims were all based on the defendant's failure to include the warning on the label and did not claim any defect in the product. **Worm v. American Cyanamid Co., 5 F.3d 744 (4th Cir. 1993), *aff'g unrep. D. Ct. dec. on rem. from*, 970 F.2d 1301 (4th Cir. 192)**.

FEDERAL ESTATE AND GIFT TAX

CHARITABLE DEDUCTION-*ALM* § 5.04[4].* Article V of the decedent's will contained all of the charitable bequests, including one bequest in trust to generally support the ideas of conservatism. The trustees executed an indenture of trust which required that all trust distributions be made only to I.R.C. § 501(c)(3) organizations. The court held that the general requirements of Article V and the trustee's indenture agreement demonstrated that the decedent's intent was to restrict the trust to distributions only to charitable organizations; therefore, the trust bequest was eligible for the charitable deduction. **Buder v. U.S., 93-2 U.S. Tax Cas. (CCH) ¶ 60,149 (8th Cir. 1993), *aff'g*, 92-2 U.S. Tax Cas. (CCH) ¶ 60,145 (E.D. Mo. 1992)**.

GIFT-*ALM* § 6.01.* On the morning of the decedent's death, the decedent directed a stockbroker to pay $10,000 to each of 20 nieces and nephews. The stockbroker began the process of liquidating a portion of the decedent's account on that day, but the transfers were not made until two days later. The decedent's estate argued that the decedent's instructions created a trust; therefore, the gifts were complete prior to the decedent's death. The court ruled that the stockbroker served only as the decedent's agent and the gifts were not complete until the money was transferred from the decedent's account after death. **Est. of Cummins, T.C. Memo. 1993-518**.

The taxpayer was a beneficiary of a marital trust established at the death of the taxpayer's spouse. The taxpayer had the power to appoint the trust property to either of the taxpayer's daughters. The taxpayer wanted to change trustees but because the trust provided no power in the beneficiary to change trustees, the taxpayer appointed the trust property to one daughter under an agreement that the daughter would immediately transfer the property to another identical trust with the taxpayer as beneficiary and cotrustee. The IRS ruled that the exercise of the power of appointment and retransfer to another trust would not cause the recognition of gain to the taxpayer nor would the transfer be subject to gift tax. **Ltr. Rul. 9344016, Aug. 5, 1993**.

The taxpayer owned rental real estate and transferred undivided interests totaling 30 percent of the property to the donor's children. The donor also created a partnership for each building which operated the building. The donor argued that the transfer to each child was of an interest in the partnerships. The court held that each transfer was of an interest in real property because the partnerships could not be created until each child had an asset to contribute to the partnership and the donor could not alone create a partnership. The court also allowed a 20 percent minority interest discount of the valuation of each gift even though all the owners were members of the same family and allowed a 10 percent discount for lack of marketability. **LeFrak v. Comm'r, T.C. Memo. 1993-526**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent's will made a bequest to the surviving spouse of 50 percent of the property in the gross estate which did not qualify for the marital deduction. The will also bequeathed the residuary estate to the spouse in trust. The estate made an election to treat the trust as QTIP and to elect the marital deduction for as much of the trust property as needed to reduce the estate tax to zero. The IRS ruled that the property passing to the trust was eligible for the marital deduction. **Ltr. Rul. 9343008, July 20, 1993**.

POWER OF APPOINTMENT. The decedent and predeceased spouse had created a revocable trust. When the spouse died, the decedent became the sole trustee and beneficiary of the trust. The decedent's position as trustee was subject to the power of three individuals to declare the decedent incapable of serving as trustee and to choose a successor trustee. This group could declare the decedent competent again and the decedent could then elect to serve as sole trustee. The group did declare the decedent incompetent and named a successor trustee who served until the decedent's death. The IRS ruled that because the decedent once served as sole trustee and could have regained the position as trustee, the decedent had a general power of appointment over the trust property which was included in the decedent's estate. **Ltr. Rul. 9344004, July 13, 1993**.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* The decedent bequeathed special use valuation farm property to a daughter. The daughter cash rented the property to a brother. The daughter assisted in the farm operation by doing some hoeing and weeding, preparing lunches and observing the operations. The daughter also claimed that she agreed to waive the rent in the years no crop was produced. The IRS sent the daughter a questionnaire as to the use of the property and the daughter returned the questionnaire on January 11, 1988. The IRS made an assessment of additional taxes for recapture of special use benefits on June 16, 1991. The court held that the daughter's involvement in the farm operation was insufficient to change the rental relationship from that of a cash basis. The court did not accept the daughter's evidence of the rental waiver agreement. The court also held that the IRS had received notice of the ineligibility of the land for special use valuation benefits upon receipt of the questionnaire; therefore, the IRS had failed to make an assessment within the three year statute of limitation period of I.R.C. § 2032A(f). **Stovall v. Comm'r, 101 T.C. No. 9 (1993)**.

TRANSFERS WITH RETAINED INTERESTS-*ALM* § 5.02[3].* The decedent had created an irrevocable trust for the decedent's spouse with the decedent and close friend as cotrustees. The trust provided for payment of all net income to the spouse and gave the trustees the power to distribute trust corpus for the spouse's support, considering the spouse's "needs and the other source of financial assistance." The court held that a portion of the value of the trust was includible in the decedent's gross estate because a portion of the trust corpus could be used to satisfy the decedent's support obligation for the spouse. The value included in the estate was determined as 10 percent, the total value of the trust less the value of the income interest and the value of the financial assistance otherwise available to the spouse. **Sullivan v. Comm'r, T.C. Memo. 1993-531**.

VALUATION-*ALM* § 6.01[6].* On the date of death, the decedent owned shares in a closely-held corporation which equaled 20.83 percent of the voting and 20.74 percent of all outstanding shares. The court used the discounted cash flow method of valuing the shares with some weight given to the proceeds of the liquidation of the corporation two years after the decedent's death and a 35 percent discount for lack of marketability. No minority discount was allowed because the valuation method used was based on a minority interest. **Est. of Jung, 101 T.C. No. 28 (1993)**.

The taxpayer purchased a residence on 1.3 acres of land in 1945 and purchased adjoining 3.4 acres of land in 1950 in order to comply with zoning laws requiring at lease 3 acres for residences. The residential parcel was transferred to a trust with the taxpayer retaining a term interest in the property and agreeing to transfer the second parcel if the transfer would not cause the first property to lose its status as a qualified personal residence trust under Treas. Reg. § 25.2702-5(c). The IRS ruled that adjoining land can be included in the trust if "reasonably appropriate for residential purposes," but refused to rule that the specific parcel here satisfied that condition. **Ltr. Rul. 9343034, Aug. 3, 1993**.

FEDERAL INCOME TAXATION

HOBBY LOSSES-*ALM* § 4.05[1].* The taxpayer was denied deductions for losses from a horse breeding activity because the taxpayer failed to demonstrate that the activity was ever intended to make a profit. **Osteen v. Comm'r, T.C. Memo. 1993-519**.

INVESTMENT TAX CREDIT-*ALM* § 4.04[1].* The shareholders of an S corporation owning investment tax credit property was not required to recapture investment tax credit when the S corporation merged with a C corporation in a tax-free reorganization under Section 381(a), because the merger was a mere change in the form of doing business where the merged corporation carried on the same business with the same assets. **Giovanini v. U.S., 93-2 U.S. Tax Cas. (CCH) ¶ 50,600 (9th Cir. 1993),** ***aff'g*****, 90-2 U.S. Tax Cas. (CCH) ¶ 50,542 (D. Or. 1990)**.

PARTNERSHIPS-*ALM* § 7.03.*

ABANDONMENT. This ruling covered two scenarios: (1) the one taxpayer was a one-third general partner with an income tax basis in the partnership interest of $180x and a one-third share of the partnership $120x liabilities; (2) another taxpayer was a one-third limited partner in a partnership with only nonrecourse liabilities for which the taxpayer was not personally liable. Both taxpayers abandoned their partnership interests without receiving any money or property; however, the first taxpayer was relieved of the liability for one-third of the partnership liabilities. The IRS ruled that because the first taxpayer received a deemed distribution from the release from partnership liability, the loss recognized from the remaining basis in the partnership interest was a capital loss. As to the second taxpayer, the IRS ruled that the loss recognized from the remaining partnership interest basis was allowed as an ordinary loss because the taxpayer did not receive any actual or deemed distribution upon abandonment of the partnership interest. **Rev. Rul. 93-80. I.R.B. 1993-38**.

PASSIVE ACTIVITY LOSSES-*ALM* § 4.05[3].* The taxpayer was an S corporation wholly-owned by one shareholder which leased trucks to a C corporation also wholly-owned by the same shareholder. The taxpayer performed customer finding, administrative and technical support services for the lessee corporation and the shareholder provided personal services as an employee of the lessee corporation. The lessee corporation hired drivers for the trucks and the trucks were maintained by third parties with the cost split between the taxpayer and the lessee corporation. The IRS ruled that because the drivers were not provided by the taxpayer, the personal services provided by the taxpayer or the shareholder were not extraordinary personal services and the losses from the leasing activity were subject to the passive activity loss limitations. **Ltr. Rul. 9343010, July 23, 1993**.

PENSION PLANS. For plans beginning in November 1993, the weighted average is 7.54 percent with the permissible range of 6.79 to 8.29 percent for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 93-57, I.R.B. 1993-37, 6**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

STOCKHOLDER'S BASIS. An S corporation shareholder's basis in the corporation was reduced by payments made by the corporation for property transferred to the shareholder's son, for the son's rent-free use of corporate property, and for unsubstantiated loans made by the corporation to the shareholder. **Sperl v. Comm'r, T.C. Memo. 1993-515**.

TRUSTS. A trust was a shareholder of a corporation which made the Subchapter S election. The trust provided that under some circumstances, trust corpus could be distributed to a person other than the current income beneficiary; therefore, the trust was not a QSST. The beneficiaries of the trust signed an agreement providing that during the life of the current income beneficiary, no trust corpus would be distributed to anyone else, and the beneficiaries obtained a court order making the reformation of the trust retroactive to before the date of the Subchapter S election. The IRS ruled that the retroactive application of the reformation of the trust was not effective for federal income tax purposes and that the Subchapter S election was invalid. The corporation was allowed to make a new election immediately and was not required to wait 5 years to make the new election under I.R.C. § 1362(g). **Rev. Rul. 93-79, I.R.B. 1993-36, 5**.

SAFE HARBOR INTEREST RATES
December 1993

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR 3.83	3.79	3.77	3.76	
110% AFR	4.21	4.17	4.15	4.13
120% AFR	4.60	4.55	4.52	4.51
		Mid-term		
AFR 5.07	5.01	4.98	4.96	
110% AFR	5.59	5.51	5.47	5.45
120% AFR	6.10	6.01	5.97	5.94
		Long-term		
AFR 6.06	5.97	5.93	5.90	
110% AFR	6.68	6.57	6.52	6.48
120% AFR	7.29	7.16	7.10	7.06

LABOR

AGRICULTURAL LABOR-*ALM* § 3.02.* The plaintiffs were employees of the defendant greenhouse who worked at various jobs for the defendant. The plaintiffs were not paid overtime wages for hours worked in excess of 40 hours per week and the plaintiffs filed an action under the Fair Labor Standards Act, 29 U.S.C. § 216(b) for the extra wages. The defendant argued that the plaintiffs were agricultural workers exempt from the FLSA requirements. The court held that an issue of fact remained as to whether the employees performed nonagricultural labor in the unloading and storing of "hard goods" such as fertilizers, soil and planters for resale to customers and the handling of mature plants purchased by the defendant for resale without additional horticultural care by the defendant. The court held that if the employees were found to have performed such tasks, overtime wages would have to be paid for those tasks. **Adkins v. Mid-American Growers, Inc., 831 F. Supp. 642 (N.D. Ill. 1993)**.

PROPERTY

EASEMENT. After many years of allowing the plaintiff to use a road through the defendant's property in order to reach the plaintiff's property, the defendant installed locked gates on the road. The plaintiff sought an injunction and a determination of an easement by prescription in response to the defendant's counterclaim for quieting title to the road. The court held that summary judgment for the defendant was improper because a fact issue remained whether the plaintiff's predecessors in title used the road by the permission of the defendant's predecessors in title. If the initial use of the road was by permission, no prescriptive easement could accrue.

Mefford v. Sinclair, 859 P.2d 1127 (Okla. Ct. App. 1993).